

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

VS.

4:93-CR-000068 GTE

LANCELL MAURICE HARRIS

ORDER

Defendant Lancell Harris, proceeding *pro se*, has filed a motion for reconsideration. Defendant has also filed a motion to appeal *in forma pauperis* this Court's prior denial of a further sentence reduction.

In his motion for reconsideration, Defendant argues that the Supreme Court's decision in *Moore v. United States*, 129 S.Ct. 4 (U.S. 2008) is cause for this Court to revisit and reconsider its prior conclusion that it lacks the authority to further reduce his sentence. (See Order dated October 21, 2008, docket no. 65). Defendant is mistaken. In *Moore*, the defendant's conviction was not yet final when the Supreme Court announced its decision in *Kimbrough*.¹ Conversely, the Defendant's sentence, which was imposed in December of 1993, had been final for years when the *Booker* and *Kimrough* decisions were announced. For the reasons previously stated, this Court has no authority to make a further reduction of Defendant's sentence.

With regard to Defendant's request for permission to appeal *in forma pauperis*, the Court concludes that motion must also be denied. Pursuant to Rule 25(a)(3) of the Federal Rules of Appellate Procedure, Defendant may be denied permission to proceed *in forma pauperis* on appeal if the district court "certifies that the appeal is not taken in good faith." This Court's ruling to deny Defendant a further sentence reduction was an application of a prior decision of

¹ *United States v. Kimbrough*, 552 U.S. ___, 128 S.Ct. 558, 169 (2007).

this Court affirmed by the Eighth Circuit Court of Appeals.² The Court knows of no good faith basis for a challenge to this Court's ruling, which is a straight forward application of existing legal principles.

IT IS THEREFORE ORDERED THAT Defendant Lancell Maurice Harris' motion for reconsideration (docket no. 68) be, and it is hereby, DENIED.

IT IS FURTHER ORDERED THAT Defendant's motion for leave to appeal *in forma pauperis* (docket no. 70) be, and it is hereby, DENIED.

IT IS SO ORDERED this 24th day of November, 2008.

 /s/Garnett Thomas Eisele
UNITED STATES DISTRICT JUDGE

² *United States v. Rowland*, No. 4:03-cr-00060 GTE (E.D. Ark. June 27, 2008), affirmed Case No. 08-2506 (8th Cir. July 29, 2008)(unpublished).